No. 17-532

In the Supreme Court of the United States

CLAYVIN B. HERRERA, PETITIONER

v.

STATE OF WYOMING

ON WRIT OF CERTIORARI
TO THE DISTRICT COURT OF WYOMING, SHERIDAN COUNTY

BRIEF FOR WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES AND CONSERVATION, HUNTING, FISHING, AND OUTFITTER AND GUIDE ASSOCIATIONS AS AMICI CURIAE SUPPORTING RESPONDENT

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TABLE OF CONTENTS

Page

Interest of amici curiae 1

Summary of argument 4

Argument:

A. The Court's decision in *Race Horse* establishes that the treaty right to hunt has been terminated 5

B. The hunting right was intended to be temporary and was terminated by the disappearance of game and the establishment of the Bighorn National Forest 9

C. Wyoming's game regulations are reasonable, non-discriminatory, and necessary for conservation 15

Conclusion 21

TABLE OF AUTHORITIES

Cases:

Antoine v. Washington, 420 U.S. 194 (1975) 17

Choctaw Nation v. United States, 318 U.S. 423 (1943) 9

Crow Tribe of Indians v. Repsis, 73 F.3d 982 (10th Cir. 1995), *cert. denied*, 517 U.S. 1221 (1996) 6, 7

Defenders of Wildlife v. Andrus, 627 F.2d 1238 (D.C. Cir. 1980) 17

Fund for Animals, Inc. v. Thomas, 932 F. Supp. 368, 370 (D.D.C. 1996), *aff'd*, 127 F.3d 80 (D.C. Cir. 1997) 18

Geer v. Connecticut, 161 U.S. 519 (1896) 16

Cases—Continued: Page

Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398 (2014) 9
Kennedy v. Becker, 241 U.S. 556 (1916) 15, 16
Kimble v. Marvel Entm't, LLC, 135 S. Ct. 2401 (2015) 9
Martin v. Waddell's Lessee, 41 U.S. (16 Pet.) 367 (1842) 16
McCready v. Virginia, 94 U.S. 391 (1877) 16
Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999) 4, 8, 9, 16, 17
Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) 9
Oregon Dep't of Fish and Wildlife v. Klamath Tribe, 473 U.S. 753 (1985) 16
Parker Land and Cattle Co. v. Wyoming Game and Fish Comm'n, 845 P.2d 1040 (Wyo. 1993) 18, 19
Puyallup Tribe v. Dep't of Game of Wash., 391 U.S. 392 (1968) 17
Smith v. Maryland, 59 U.S. (18 How.) 71 (1855) 16
United States v. County of Fresno, 429 U.S. 452 (1977) 12
Volkswagenwerk AG v. Schlunk, 486 U.S. 694 (1988) 9
Ward v. Race Horse, 163 U.S. 504 (1896) ..... *passim*
Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979) 17
Water Splash, Inc. v. Menon, 137 S. Ct. 1504 (2017) 9
Wilson v. Cook, 327 U.S. 474 (1946) 11

Treaties, statutes, and regulations: Page

Treaty between the United States of America and the Crow Tribe of Indians, May 7, 1868, 15 Stat. 649 ..... *passim*
Treaty Between the United States of America and the Eastern Band of Shoshonees and the Bannack Tribe of Indians, July 3, 1868, 15 Stat. 673 5
Act of Mar. 1, 1872, ch. 24, 17 Stat. 32 10
§ 2, 17 Stat. 33 10
Act of Mar. 3, 1891, § 24, ch. 561, 26 Stat. 1103 11
Act of June 4, 1897, ch. 2, 30 Stat. 36 (16 U.S.C. § 480) 11, 12
16 U.S.C. § 528 17
43 U.S.C. § 1732(b) 17
Wyo. Stat. Ann. § 23-3-102(d) 20
Wyo. Stat. Ann. § 23-6-205(a) 20
36 C.F.R. § 261.8(a) 18
36 C.F.R. § 241.2 18

Miscellaneous:

Executive Order 13,443, § 2(d), 72 Fed. Reg. 46,537 (Aug. 16, 2007) 18
H.R. Exec. Doc. No. 97, 40th Cong., 2d Sess. (1868) 12
Helen Hunt Jackson, *Century of Dishonor: A Sketch of the United States Government's Dealings With Some of the Indian Tribes* (1881) 13
Carolyn B. Meyer, et al., United States Department of Agriculture, Forest Service, Rocky Mountain Research Station, *Historic Range of Variability for Upland Vegetation in the Bighorn National Forest, Wyoming* (2005) 14

Miscellaneous—Continued: Page

Ruth S. Musgrave, et al., *The Status of Poaching in the United States—Are We Protecting our Wildlife?*, 33 Nat. Resources J. 977 (1993) 20

Proclamation No. 30, 29 Stat. 909 (Feb. 22, 1897) 11

U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* (1881) 14

U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* (1885) 14

U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* (1894) 14

David Willms and Anne Alexander, *The North American Model of Wildlife Conservation in Wyoming: Understanding It, Preserving It, and Funding Its Future*, 14 Wyo. L. Rev. 659 (2014) 19, 20

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INTEREST OF AMICI CURIAE*

The Western Association of Fish and Wildlife Agencies (WAFWA) is an Idaho non-profit corporation whose members are 19 state fish and wildlife

* No counsel for a party authored this brief in whole or in part, and no person other than amicus, their members, or their counsel has made a monetary contribution intended to fund the preparation or submission of the brief. Both parties have entered blanket consents to the filing of amicus briefs.

agencies from across the western United States, as well the provincial fish and game agencies from three western Canadian provinces and two Canadian territories. Altogether, WAFWA's members oversee an area covering nearly 3.7 million square miles of some of North America's most wild and scenic country. Founded in 1922, WAFWA seeks to advance collaborative, proactive science-based fish and wildlife conservation and management across the West.

The Boone and Crockett Club, founded in 1887 by Theodore Roosevelt and George Bird Grinnell, is the oldest wildlife conservation organization in North America. It is the mission of the Boone and Crockett Club to promote the conservation and management of wildlife, especially big game, and its habitat. Boone and Crockett's efforts to establish a foundation and framework for conservation in America includes an emphasis on science-based professional wildlife research and management, consistent with the tenets of the North American Model for Wildlife Conservation. Boone and Crockett, through its members, was instrumental in saving elk from extinction and was an initiator and champion of the first National Parks and the earliest science-based wildlife management efforts and legislation.

Founded in 1984, the Rocky Mountain Elk Foundation (RMEF) is the leading organization focused primarily on the conservation of wild elk. The mission of RMEF is to ensure the future of elk, other wildlife, their habitat and America's hunting heritage. With over 500 volunteer chapters across the country and more than 227,000 members, RMEF has worked to protect and enhance more than 7.3 million acres of

North American wildlife habitat and has partnered with eastern, midwestern and western States to reintroduce elk to historic ranges.

The Wyoming Outdoorsmen is a broad-based coalition of sportsmen and sportswomen established to promote the improvement of hunting, fishing, trapping, quality habitat programs and other outdoor experiences for youth and family involvement. The Wyoming Outdoorsmen's over 780 active members work closely with state and local governments and nongovernmental organizations to improve wildlife habitat and conservation through quality wildlife management practices.

The Wyoming Outfitter and Guide Association (WYOGA) is a trade association with a membership of over 100 licensed outfitters. Cody Country Outfitter and Guides Association (CCOGA) is a trade association made up of outfitters from the area surrounding Cody, Wyoming. Both WYOGA and CCOGA support the current wildlife-management model that, for more than 100 years, has helped ensure Wyoming has healthy, sustainable wildlife populations that provide recreational opportunities for the hunting and nonhunting public.

Amici are keenly interested in the outcome of this case, which threatens not only to overturn the delicate balance of federal, state, and tribal fish and wildlife jurisdictions that have served the public's interests in the western United States since the late 1800s, but also to undermine the two basic principles of the North American Model of Wildlife Conservation: that fish and wildlife belong to all Americans, and that they

need to be managed in such a way that their populations will be sustained forever.

SUMMARY OF ARGUMENT

The Second Treaty of Fort Laramie reserved to the Crow Tribe "the right to hunt on unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." Treaty between the United States of America and the Crow Tribe of Indians (1868 Treaty), May 7, 1868, 15 Stat. 649. In 1896, this Court held that this right was a "temporary and precarious" one that terminated upon Wyoming's admission to the Union. *Ward v. Race Horse*, 163 U.S. 504, 515 (1896). Under *Race Horse*, petitioner's conviction for violating Wyoming's game laws should be affirmed.

Petitioner argues that this Court overruled *Race Horse* in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), but that is not so. Although the Court in *Mille Lacs* noted that part of *Race Horse*'s reasoning had been abrogated by subsequent decisions, it expressly reaffirmed what it characterized as an "alternative holding" of *Race Horse*—that "[t]he treaty rights at issue were not intended to survive Wyoming's statehood." *Id.* at 206. That alternative holding resolves this case.

Even apart from the precedential value of *Race Horse*, the decision reflects a correct interpretation of the treaty in light of its historical context. The hunting right reserved in the 1868 Treaty was understood to be temporary because the treaty contemplated that the Crow Tribe would transition to farming from sub-

sistence hunting and the historical circumstances demanded it. In addition, the treaty extended the hunting right only to "hunting districts." 1868 Treaty, art. 4, 15 Stat. 650. This Court previously recognized that the creation of Yellowstone National Park removed the park from the scope of the "hunting districts" recognized by treaty. The creation of the Bighorn National Forest did the same.

Even if this Court were to reject the interpretation of the treaty reflected in *Race Horse*, the judgment should still be affirmed because the Wyoming law at issue is a reasonable and nondiscriminatory conservation measure. State regulation of hunting, like the regulation at issue here, is essential to the preservation of wildlife.

ARGUMENT

A. The Court's decision in *Race Horse* establishes that the treaty right to hunt has been terminated

1. In *Race Horse*, this Court construed treaty language materially identical to that at issue here, and it determined that the language created only a "temporary and precarious" right to hunt. 163 U.S. at 510. That case involved Article 4 of the Treaty Between the United States of America and the Eastern Band of Shoshonees and the Bannack Tribe of Indians, July 3, 1868, 15 Stat. 674-75, which guaranteed "the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." Emphasizing the treaty language limiting the right to "unoccupied lands

of the United States" within "the hunting districts," the Court reasoned that the treaty "clearly contemplated the disappearance of the conditions therein specified." 163 U.S. at 509-10. And having determined that the treaty right was "temporary and precarious [in] nature," the Court noted that Wyoming had been admitted to the Union as "a sovereign State, a necessary incident of whose authority was the complete power to regulate the killing of game within its borders." *Id.* at 510. The Court explained that the statute admitting Wyoming on an equal footing with other States "would be in conflict with the treaty if it was so construed as to allow the Indians to seek out every unoccupied piece of government land and thereon disregard and violate the state law." *Id.* at 511. Although the Court acknowledged that "treaties should be so construed as to uphold the sanctity of the public faith," it concluded that the treaty could not be read "to imply that it conveyed rights wholly inconsistent with its language and in conflict with an act of Congress, and also destructive of the rights of one of the States." *Id.* at 516.

2. In 1995, the Tenth Circuit addressed the same question the *Race Horse* Court resolved in 1896—whether "the right to hunt on the unoccupied lands of the United States" reserved to the Crow Tribe the right to hunt in violation of Wyoming laws. *Crow Tribe of Indians v. Repsis*, 73 F.3d 982 (10th Cir. 1995), *cert. denied*, 517 U.S. 1221 (1996). In that case, which arose after a member of the Crow Tribe was convicted of killing an elk in the Bighorn National Forest in violation of state law, the Tribe argued that *Race Horse* was no longer good law because, it said,

this Court had repudiated the propositions that states have plenary control over game and that the equal-footing doctrine abrogates treaty hunting rights. *Id.* at 985, 988. The Tenth Circuit rejected the first argument as a mischaracterization of this Court's decisions regarding state regulation of wildlife. *Id.* at 990. As to the equal-footing doctrine, the Tenth Circuit held that while the "doctrine does not prevent the United States from creating a right in a territory which would be binding on the state upon its admission," such a treaty right must be "continuing or perpetual," which "the right to hunt on the unoccupied lands of the United States" was not. *Id.* at 991. The court also concluded that the statute creating the Bighorn National Forest "resulted in the 'occupation' of the land," such that the hunting right could not have applied. *Id.* at 993.

3. The *Repsis* decision was a final judgment with respect to the right asserted by the Crow Tribe on behalf of its enrolled members. As Wyoming has explained (at 21-38), principles of issue preclusion make that judgment binding upon petitioner, a member of the Crow Tribe. But even if the *Repsis* judgment did not have preclusive effect, it would still be entitled to respect because it correctly applied *Race Horse*, which resolves the question presented here.

Petitioner argues (at 28) that this Court "thoroughly repudiated *Race Horse*'s reasoning" in *Mille Lacs*. That is incorrect. While the Court in *Mille Lacs* rejected the equal-footing doctrine as a basis for abrogating treaty rights, it did not disturb *Race Horse*'s conclusion that "the right to hunt on the unoccupied lands of the United States" was intended to be tempo-

rary and was terminated upon Wyoming's admission to the Union. As the *Mille Lacs* Court explained: "*Race Horse* rested on the premise that treaty rights are irreconcilable with state sovereignty. It is *this conclusion*—the conclusion undergirding the *Race Horse* Court's equal footing holding—that we have consistently rejected over the years." 526 U.S. at 205 (emphasis added).

Significantly, the Court in *Mille Lacs* went on to emphasize that "[t]he equal footing doctrine was only part of the holding in *Race Horse*," and that *Race Horse* also "announced an alternative holding: The treaty rights at issue were not intended to survive Wyoming's statehood." 526 U.S. at 206. The Court explained that the 1837 treaty with the Chippewa, the treaty at issue in *Mille Lacs*, was different from the treaty at issue in *Race Horse* because "*unlike* the rights at issue in *Race Horse*, there is no fixed termination point to the 1837 Treaty rights." *Id.* at 207 (emphasis added). As the Court observed, "[t]he Treaty in *Race Horse* contemplated that the rights would continue only so long as the hunting grounds remained unoccupied and owned by the United States; the happening of these conditions was 'clearly contemplated' when the Treaty was ratified." *Id.* (quoting *Race Horse*, 163 U.S. at 509). Contrary to petitioner's argument, *Mille Lacs* thus reaffirmed the key holding of *Race Horse* with respect to the Wyoming treaty. That holding controls this case.

B. The hunting right was intended to be temporary and was terminated by the disappearance of game and the establishment of the Bighorn National Forest

This Court has explained that departing from precedent requires "'special justification'—over and above the belief 'that the precedent was wrongly decided.'" *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015) (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2407 (2014)). Petitioner has provided no "special justification" for departing from *Race Horse*, and he has not shown that it was wrongly decided. To the contrary, the interpretation adopted in *Race Horse* is compelled by the text and historical context of the treaty.

To interpret treaty language, the Court must "begin with the text of the treaty," but it must also consider "the context in which the written words are used." *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1508-09 (2017) (quoting *Volkswagenwerk AG v. Schlunk*, 486 U.S. 694, 699 (1988)); *accord Mille Lacs*, 526 U.S. at 196 (Courts must "look beyond the written words to the larger context that frames the Treaty, including 'the history of the treaty, the negotiations, and the practical construction adopted by the parties.'") (quoting *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943)). And interpretation must take into account "the common notions of the day." *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 206 (1978).

Like the treaty at issue in *Race Horse*, the 1868 Treaty reserved "the right to hunt on the unoccupied

lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." Art. 4, 15 Stat. 650. Understood in historical context, that language created an "essentially perishable" interest, an interest that no longer exists within the Bighorn National Forest in Wyoming. *Race Horse*, 163 U.S. at 515.

1. As this Court noted in *Race Horse*, the treaty language contains an important limitation: the right to hunt extends only to "unoccupied lands of the United States," and only to "lands of that character embraced within what the treaty denominates as hunting districts." 163 U.S. at 508. Wyoming has explained (at 55-62) that the creation of the Bighorn National Forest rendered that land "occupied" in the sense contemplated by the treaty. The creation of the Bighorn National Forest was also significant for the independent reason that it removed the land from the "hunting districts."

The Court in *Race Horse* explained the meaning of the treaty's reference to "hunting districts" by examining the statutes creating Yellowstone National Park in 1872, just four years after the treaty at issue here was ratified. 163 U.S. at 510; *see* Act of Mar. 1, 1872, ch. 24, 17 Stat. 32. In creating the park, Congress directed the Secretary of the Interior to remove trespassers and to promulgate regulations to prevent "the wanton destruction of the fish and game" found in the park. *Id.* § 2, 17 Stat. 33. This Court viewed Congress' decision to remove Yellowstone from the "hunting districts" so soon after executing treaties with the Plains Tribes as "a clear indication of the sense of

Congress on the subject." *Race Horse*, 163 U.S. at 510. As the Court explained, "[t]he construction which would affix to the language of the treaty any other meaning than that [of a temporary right] would necessarily imply that Congress had violated the faith of government and defrauded the Indians by proceeding immediately to forbid hunting in a large portion of the territory where it is now asserted there was a contract right to kill game created by the treaty in favor of the Indians." *Id.*

The creation of the Bighorn National Forest had a similar effect because it, like Yellowstone National Park, was carved out of the "hunting districts" in which the Crow Tribe could previously hunt. In 1897, President Cleveland exercised authority granted by Congress to establish what would eventually be named the Bighorn National Forest. Proclamation No. 30, 29 Stat. 909 (Feb. 22, 1897); *see* Act of Mar. 3, 1891, § 24, ch. 561, 26 Stat. 1103. The proclamation reserved the land "from entry or settlement" and warned "all persons not to enter or to make settlement upon the tract of land reserved by this proclamation," thereby closing public land to settlement on the forest. 29 Stat. 910. Later that year, Congress provided that the "jurisdiction, both civil and criminal, over persons within such [forest] reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned." Act of June 4, 1897, ch. 2, 30 Stat. 36 (16 U.S.C. § 480). That statute ensured that the State of Wyoming would retain concurrent jurisdiction, with the federal government, over the forest. *See Wilson v. Cook*, 327 U.S.

474, 487 (1946) ("Congress in effect has declined to accept exclusive legislative jurisdiction over forest reserve lands."); *United States v. County of Fresno*, 429 U.S. 452, 455 (1977) ("Pursuant to 16 U.S.C. § 480, the States retain civil and criminal jurisdiction over the national forests notwithstanding the fact that the national forests are owned by the Federal Government."). If the restrictions on hunting contemplated by the statute creating Yellowstone National Park were sufficient to show that the park had been "carved out of what constituted the hunting districts," *Race Horse*, 163 U.S. at 510, then the restrictions on hunting provided by Wyoming law, which Congress and the President made applicable to the Bighorn National Forest when they set it aside, must have a similar effect.

2. The limited availability of game and the assumption that game would disappear also support the Court's conclusion in *Race Horse*. Article 4 of the 1868 Treaty provides that the "right to hunt" applies only "so long as game may be found" within the "unoccupied lands of the United States." 15 Stat. 650. At the time the treaty was signed, it was understood by all that game would not continue to "be found" indefinitely. The recommendations of the Indian Peace Commissioners, which President Johnson submitted to Congress, made that understanding clear: "When the buffalo is gone the Indians will cease to hunt. A few years of peace and the game will have disappeared. In the meantime by the plan suggested we will have formed a nucleus of civilization around the young that will restrain the old and furnish them a home and subsistence when the game is gone." H.R. Exec. Doc. No.

97, 40th Cong., 2d Sess. 18 (1868). And the tribes had a similar understanding. *See* Helen Hunt Jackson, *Century of Dishonor: A Sketch of the United States Government's Dealings With Some of the Indian Tribes* 71 (1881) (describing the desire of the Plains Indians to establish friendly relations with the United States Government because with thinning of buffalo herds, "starvation stared them in the face, and they knew it").

Other provisions of the 1868 Treaty reflect the understanding that the Crow Tribe would convert from subsistence hunting to farming. Article 6 grants Indians who wish to farm the right to select up to 320 acres for their exclusive possession and occupation, on the condition that they cultivate the land. 15 Stat. 650-51. The government promised to provide "seeds and agricultural implements," as well as "one good American cow and one good, well-broken pair of American oxen" to those Indians who began to farm. Arts. 8, 9, 15 Stat. 651-52. The government also promised annual appropriations "for the purpose of such articles as, from time to time, the condition and necessities of the Indians may indicate to be proper," with the specified appropriation being twice as large for "each Indian engaged in agriculture" as for "each Indian roaming." Art. 9, 15 Stat. 652. The government even promised a bonus to the ten tribal members who "grow the most valuable crops." Art. 12, 15 Stat. 652. Those provisions demonstrate that the hunting right—like the need for subsistence hunting—"was to cease." *Race Horse*, 163 U.S. at 515.

3. The prospect that game would disappear was not merely contemplated by the treaty negotiators; it ac-

tually came to pass. Just over a decade after the treaty was signed, the Commissioner of Indian Affairs reported that it was "but a question of short time when the rapid settlement of the country and the disappearance of the buffalo will necessitate the confinement of the Crows to their reservation." U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* XXIII (1881). By the early to mid-1880s, the buffalo were largely gone in the region, elk were scarce, and deer and antelope could be found only "after miles of hard travel." U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* 212 (1885).

In 1889, the Department of the Interior issued a circular stating, "[i]n view of the settlement of the country and the consequent disappearance of the game, the time has long since gone by when the Indians can live by the chase." U.S. Dep't of the Interior, *Annual Report of the Commissioner of Indian Affairs* 67 (1894). And soon thereafter, the elk population was greatly diminished throughout Wyoming and had disappeared from the Bighorn National Forest. Carolyn B. Meyer, et al., United States Department of Agriculture, Forest Service, Rocky Mountain Research Station, *Historic Range of Variability for Upland Vegetation in the Bighorn National Forest, Wyoming* 15 (2005) (*Historic Range*).

By the early 20th century, the period of time in which "game may be found" had come to an end. Significantly, the elk that petitioner shot were present in the Bighorn National Forest because elk were reintroduced to the forest in 1909. *Historic Range* 15-16.

C. Wyoming's game regulations are reasonable, nondiscriminatory, and necessary for conservation

Since 1896, Wyoming has acted in reliance on this Court's decision in *Race Horse* to rebuild game populations and develop conservation strategies to protect wildlife. Even if this Court were to conclude that *Race Horse* misinterpreted the treaty language, and even if, notwithstanding the State's reliance interests, the Court were to conclude that *Race Horse* should be overruled, the Wyoming law at issue here should nevertheless be upheld because it is a reasonable, nondiscriminatory regulation that is necessary for the conservation of wildlife.

1. This Court has recognized the important role of States in regulating wildlife, even when treaty hunting and fishing rights are at issue, and the challenges of joint management. In *Kennedy v. Becker*, 241 U.S. 556 (1916), for example, the Court upheld the conviction of three Seneca Indians charged with spearing fish in violation of New York law. Construing treaty language conveying "the privilege of fishing and hunting on the said tract of land," the Court explained that "[t]he right thus reserved was not an exclusive right" that could be managed by both the State and the tribe. *Id.* at 562. "Such a duality of sovereignty, instead of maintaining in each the essential power of preservation, would in fact deny it to both." *Id.* at 563. The Court observed that "it can hardly be supposed that the thought of the Indians was concerned with the necessary exercise of inherent power under modern conditions for the preservation of wild life." *Id.*

"[T]he existence of the sovereignty of the state," by contrast, "was well understood, and this conception involved all that was necessarily implied in that sovereignty, whether fully appreciated or not." *Id.*

That holding reflects the understanding of all treaty parties during the 19th century that States would ultimately regulate the wildlife within their borders because they had the exclusive power to do so. *See Martin v. Waddell's Lessee*, 41 U.S. (16 Pet.) 367, 411-18 (1842) (fisheries within exclusive control of States); *Smith v. Maryland*, 59 U.S. (18 How.) 71, 75 (1855) (public right in fishery includes "the legislative power . . . to interrupt the voyage and inflict the forfeiture of a vessel enrolled and licensed under the laws of the United States for a disobedience . . . of the commands of such a law"); *McCready v. Virginia*, 94 U.S. 391 (1877) (State could prohibit residents of other States from planting or taking oysters in tidewaters); *Geer v. Connecticut*, 161 U.S. 519, 530 (1896) ("[S]tate has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people.").

To be sure, this Court observed in *Mille Lacs* that "an Indian tribe's treaty rights to hunt, fish, and gather on state land are not irreconcilable with a State's sovereignty over the natural resources in the State." 526 U.S. at 204. But that modern view does not alter the understanding that prevailed when the treaty was negotiated in the 19th century. And in any event, the Court recognized in *Mille Lacs* "that Indian treaty-based usufructuary rights do not guarantee the Indians 'absolute freedom' from state regulation." *Id.* at 204 (quoting *Oregon Dep't of Fish and Wildlife v.*

Klamath Tribe, 473 U.S. 753, 765 n.16 (1985)). To the contrary, the Court has "repeatedly reaffirmed state authority to impose reasonable and necessary nondiscriminatory regulations on Indian hunting, fishing, and gathering rights in the interest of conservation." *Id.* at 205; *accord Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979); *Antoine v. Washington*, 420 U.S. 194 (1975); *Puyallup Tribe v. Dep't of Game of Wash.*, 391 U.S. 392 (1968).

2. Congress has recognized the important role of States in regulating hunting, including hunting on federal lands. Thus, "[d]espite its ability to take control into its own hands, Congress has traditionally allotted the authority to manage wildlife to the states." *Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1248 (D.C. Cir. 1980). With respect to the National Forests, Congress has expressly preserved and reaffirmed existing state jurisdiction. *See, e.g.*, 16 U.S.C. § 528 ("Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests."); 43 U.S.C. § 1732(b) ("[N]othing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife."). Indeed, "each successive statute enacted since [the creation of the National Forest System] purporting to govern the management of the national forests has acknowledged and confirmed the situs states' continuing authority to

regulate hunting and fishing thereon generally." *Fund for Animals, Inc. v. Thomas*, 932 F. Supp. 368, 370 (D.D.C. 1996), *aff'd*, 127 F.3d 80 (D.C. Cir. 1997).

This traditional allocation of authority over hunting is also reflected in Forest Service regulations. Hunting in violation of state law is prohibited in the National Forests, 36 C.F.R. § 261.8(a), and under 36 C.F.R. § 241.2, "[o]fficials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands." Executive Order 13,443, § 2(d), 72 Fed. Reg. 46,537 (Aug. 16, 2007) likewise directs the Department of Agriculture to "[w]ork collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources."

3. State regulation remains necessary to the conservation of wildlife. Westward expansion into the area that is now the State of Wyoming brought with it the over-exploitation of important species by commercial hunting and overharvest. *Parker Land and Cattle Co. v. Wyoming Game and Fish Comm'n*, 845 P.2d 1040, 1053 (Wyo. 1993). As noted above, elk had largely disappeared before their reintroduction in the early 20th century.

Wyoming's long history of wildlife management demonstrates that the State's exercise of jurisdiction over game and fish has been essential to ending and preventing the over-exploitation of wildlife resources by unregulated hunting. *See generally Parker*, 845 P.2d at 1052-1056 (describing early history of state

regulation of hunting in Wyoming); *see also* David Willms and Anne Alexander, *The North American Model of Wildlife Conservation in Wyoming: Understanding It, Preserving It, and Funding Its Future*, 14 Wyo. L. Rev. 659 (2014) (*North American Model*). As early as 1869, Wyoming's first Territorial Legislature enacted a statute regulating the sale of fish and game, but the law set no harvest limits and contained no enforcement provisions for the taking of wildlife, and it proved ineffective. *Parker*, 845 P.2d at 1054; *see also* Willms and Alexander, *North American Model* 673. Throughout the 1870s and 1880s, the Territory "slowly and haltingly passed laws in feeble efforts to provide some semblance of protection for game and fish." *Parker*, 845 P.2d at 1054. Slow progress continued at the turn of the 20th century, with the establishment of hunting seasons and the creation of the office of the State Game Warden. *Id.* at 1055-56.

After the turn of the 20th century, Wyoming continued to enact laws requiring hunting licenses, establishing a state game commission, and providing funding for wildlife management activities. Willms and Alexander, *North American Model* 674-675. Since 1929, the Wyoming Game Commission has had the authority to open and close hunting seasons and to set bag limits. *Id.* at 675. Wyoming also adopted a comprehensive set of laws addressing its responsibility to manage wildlife. *Id.*

It is essential to the conservation of wildlife within the State that Wyoming continue its comprehensive management of hunting, including by members of Indian tribes on National Forests lands. Unauthorized hunting continues to pose a direct threat to wildlife

populations in the United States. *See* Ruth S. Musgrave, et al., *The Status of Poaching in the United States—Are We Protecting our Wildlife?*, 33 Nat. Resources J. 977 (1993). In addition, unlicensed hunting indirectly undermines state wildlife management efforts—for all wildlife resources, not just game animals—by reducing a principal funding stream for state wildlife agencies. *See* Willms and Alexander, *North American Model* 670-73. Wyoming's wildlife management efforts, as in nearly every State, are funded primarily through the sale of state hunting licenses and through excise taxes on firearms, ammunition, and archery and fishing equipment. *Id.*

Wyoming's hunting laws apply equally to non-Indians and Indians and therefore do not discriminate. Wyo. Stat. Ann. §§ 23-3-102(d), 23-6-205(a). The law at issue here should therefore be upheld as a reasonable, nondiscriminatory regulation that is necessary to the conservation of wildlife.

CONCLUSION

The judgment of the Wyoming district court should be affirmed.

Respectfully submitted.

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